

**FORECLOSURE RESCUE AND LOAN
MODIFICATION AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies provisions related to licensure and prohibited conduct for those engaging in foreclosure rescue or loan modification assistance.

Highlighted Provisions:

This bill:

- modifies definitions related to real estate licensing;
- modifies prohibited conduct by real estate licensees;
- modifies definitions related to mortgage officer licensing;
- modifies prohibited conduct by a mortgage officer licensee; and
- makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2-2, as last amended by Laws of Utah 2005, Chapter 257

61-2-3, as last amended by Laws of Utah 2009, Chapter 356

61-2-10, as last amended by Laws of Utah 2009, Chapter 352

61-2-11, as last amended by Laws of Utah 2009, Chapter 352

61-2c-102 (Effective 01/01/10), as last amended by Laws of Utah 2009, Chapter 372

61-2c-301 (Effective 01/01/10), as last amended by Laws of Utah 2009, Chapters 72
and 372

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-2-2** is amended to read:

61-2-2. Definitions.

As used in this chapter:

(1) "Associate real estate broker" and "associate broker" means ~~[any]~~ a person who:

(a) is employed or engaged as an independent contractor by or on behalf of a licensed principal real estate broker to perform ~~[any]~~ an act set out in Subsection ~~[(12)] (15)~~ for valuable consideration~~[, who]; and~~

(b) has qualified under this chapter as a principal real estate broker.

(2) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(3) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

~~[(3)] (4)~~ "Commission" means the Real Estate Commission established under this chapter.

~~[(4)] (5)~~ "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.

~~[(5)] (6)~~ "Condominium" or "condominium unit" is as defined in Section 57-8-3.

~~[(6)] (7)~~ "Condominium homeowners' association" means all of the condominium unit owners acting as a group in accordance with declarations and bylaws.

~~[(7)] (8)~~ (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.

(b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.

~~[(8)] (9)~~ "Director" means the director of the Division of Real Estate.

~~[(9)] (10)~~ "Division" means the Division of Real Estate.

~~[(10)] (11)~~ "Executive director" means the director of the Department of Commerce.

(12) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to engage in an act that:

(a) the person represents will assist a borrower in preventing a foreclosure; and

(b) relates to a transaction involving the transfer of title to residential real property.

(13) "Loan modification assistance" means to act or offer to act on behalf of a person

to:

(a) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:

(i) an increase or decrease in an interest rate;

(ii) a change to the type of interest rate;

(iii) an increase or decrease in the principal amount of the residential mortgage loan;

(iv) a change in the number of required period payments;

(v) an addition of collateral;

(vi) a change to, or addition of, a prepayment penalty;

(vii) an addition of a cosigner; or

(viii) a change in persons obligated under the existing residential mortgage loan; or

(b) substitute a new residential mortgage loan for an existing residential mortgage loan.

~~[(11)]~~ (14) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.

~~[(12)]~~ (15) "Principal real estate broker" and "principal broker" means ~~[any person]~~ an individual who:

(a) (i) ~~[who]~~ sells or lists real estate for sale;

(ii) buys, exchanges, or auctions real estate, options on real estate, or improvements on real estate with the expectation of receiving valuable consideration; or

~~[(ii) who]~~ (iii) advertises, offers, attempts, or otherwise holds ~~[himself]~~ the person out to be engaged in the business described in Subsection ~~[(12)(a)(i)]~~ (15)(a)(i) or (ii);

(b) is employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate ~~[who performs any of the acts]~~ and performs an act described in Subsection ~~[(12)]~~ (15)(a), whether the person's compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;

(c) (i) ~~[who]~~ with the expectation of receiving valuable consideration, manages property owned by another person; or ~~[who]~~

(ii) advertises or otherwise holds ~~[himself]~~ the person out to be engaged in property management;

(d) ~~[who]~~ with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of ~~[the transactions]~~ a transaction listed in Subsections ~~[(12)]~~ (15)(a) and (c); ~~[and]~~

(e) except for ~~[mortgage lenders, title insurance agents, and their employees, who]~~ a mortgage lender, title insurance agent, or an employee of a mortgage lender or title insurance agent, assists or directs in the closing of ~~[any]~~ a real estate transaction with the expectation of receiving valuable consideration~~[-]; or~~

(f) (i) engages in foreclosure rescue; or

(ii) advertises, offers, attempts, or otherwise hold the person out as being engaged in foreclosure rescue.

~~[(13)]~~ (16) (a) "Property management" means engaging in, with the expectation of receiving valuable consideration, the management of property owned by another person, or advertising or otherwise claiming to be engaged in property management by:

(i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;

(ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or

(iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

(i) hotel or motel management;

(ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for any period of less than 30 consecutive days, and the management activities associated with these rentals; or

(iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

~~[(14)]~~ (17) "Real estate" includes leaseholds and business opportunities involving real property.

~~[(15)]~~ (18) "Real estate sales agent" and "sales agent" mean ~~[any person]~~ an individual affiliated with a licensed principal real estate broker, either as an independent contractor or an employee as provided in Section 61-2-25, to perform for valuable consideration any act set out

125 in Subsection ~~[(12)]~~ (15).

126 ~~[(16)]~~ (19) (a) "Regular salaried employee" means an individual who performs a
127 service for wages or other remuneration, whose employer withholds federal employment taxes
128 under a contract of hire, written or oral, express or implied.

129 (b) "Regular salaried employee" does not include ~~[a person]~~ an individual who
130 performs services on a project-by-project basis or on a commission basis.

131 ~~[(17)]~~ (20) "Reinstatement" means restoring a license that has expired or has been
132 suspended.

133 ~~[(18)]~~ (21) "Reissuance" means the process by which a licensee may obtain a license
134 following revocation of the license.

135 ~~[(19)]~~ (22) "Renewal" means extending a license for an additional licensing period on
136 or before the date the license expires.

137 ~~[(20)]~~ (23) (a) "Undivided fractionalized long-term estate" means an ownership interest
138 in real property by two or more persons that is a:

139 (i) tenancy in common; or

140 (ii) any other legal form of undivided estate in real property including:

141 (A) a fee estate;

142 (B) a life estate; or

143 (C) other long-term estate.

144 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

145 Section 2. Section **61-2-3** is amended to read:

146 **61-2-3. Exempt persons and transactions.**

147 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
148 required for:

149 (i) a person who as owner or lessor performs the acts described in Subsection
150 61-2-2~~[(12)]~~(15) with reference to property owned or leased by that person;

151 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
152 to nonresidential real estate owned or leased by the employer, performs the acts enumerated in
153 Subsections 61-2-2~~[(12)]~~(15)(a) and (b);

154 (iii) a regular salaried employee of the owner of real estate who performs property
155 management services with reference to real estate owned by the employer, except that the

156 employee may only manage property for one employer;

157 (iv) a person who performs property management services for the apartments at which

158 that person resides in exchange for free or reduced rent on that person's apartment;

159 (v) a regular salaried employee of a condominium homeowners' association who

160 manages real property subject to the declaration of condominium that established the

161 homeowners' association, except that the employee may only manage property for one

162 condominium homeowners' association; and

163 (vi) a regular salaried employee of a licensed property management company who

164 performs support services, as prescribed by rule, for the property management company.

165 (b) Subsection (1)(a) does not exempt from licensing:

166 (i) an employee engaged in the sale of properties regulated under:

167 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

168 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

169 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,

170 Chapter 23, Real Estate Cooperative Marketing Act; or

171 (iii) a person whose interest as an owner or lessor is obtained by that person or

172 transferred to that person for the purpose of evading the application of this chapter, and not for

173 any other legitimate business reason.

174 (2) A license under this chapter is not required for:

175 (a) an isolated transaction by a person holding a duly executed power of attorney from

176 the owner;

177 (b) services rendered by an attorney in performing the attorney's duties as an attorney;

178 (c) a receiver, trustee in bankruptcy, administrator, executor, or a person acting under

179 order of any court;

180 (d) a trustee or employee of a trustee under a deed of trust or a will;

181 (e) a public utility, officer of a public utility, or regular salaried employee of a public

182 utility, unless performance of any of the acts set out in Subsection 61-2-2[(12)](15) is in

183 connection with the sale, purchase, lease, or other disposition of real estate or investment in

184 real estate unrelated to the principal business activity of that public utility;

185 (f) a regular salaried employee or authorized agent working under the oversight of the

186 Department of Transportation when performing an act on behalf of the Department of

- 187 Transportation in connection with one or more of the following:
- 188 (i) the acquisition of real property pursuant to Section 72-5-103;
- 189 (ii) the disposal of real property pursuant to Section 72-5-111;
- 190 (iii) services that constitute property management; or
- 191 (iv) the leasing of real property;
- 192 (g) a regular salaried employee of a county, city, or town when performing an act on
- 193 behalf of the county, city, or town:
- 194 (i) in accordance with:
- 195 (A) if a regular salaried employee of a city or town:
- 196 (I) Title 10, Utah Municipal Code; or
- 197 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 198 (B) if a regular salaried employee of a county:
- 199 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 200 (II) Title 17, Counties; and
- 201 (ii) in connection with one or more of the following:
- 202 (A) the acquisition of real property, including by eminent domain;
- 203 (B) the disposal of real property;
- 204 (C) services that constitute property management; or
- 205 (D) the leasing of real property.
- 206 (3) A license under this chapter is not required for a person registered to act as a
- 207 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
- 208 sale or the offer for sale of real estate if:
- 209 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
- 210 Securities Act of 1933 and the Securities Exchange Act of 1934; and
- 211 (ii) the security is registered for sale:
- 212 (A) pursuant to the Securities Act of 1933; or
- 213 (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or
- 214 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
- 215 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
- 216 D, Rule 506, 17 C.F.R. Sec. 230.506; and
- 217 (ii) the selling agent and the purchaser are not residents of this state.

Section 3. Section **61-2-10** is amended to read:

**61-2-10. Restriction on commissions -- Affiliation with more than one broker --
Specialized licenses -- Designation of agents or brokers.**

(1) (a) Except as provided in Subsection (1)(b), an associate broker or sales agent may not accept valuable consideration for the performance of an act specified in this chapter from a person except the principal broker with whom the associate broker or sales agent is affiliated and licensed.

(b) An associate broker or sales agent may receive valuable consideration for the performance of an act specified in this chapter from a person other than the principal broker with whom the associate broker or sales agent is affiliated if:

(i) the valuable consideration is paid with a payment instrument prepared by a title insurance agent;

(ii) the title insurance agent provides the payment instrument to the principal broker;

(iii) the title insurance agent complies with the written instructions of the principal broker:

(A) in preparing the payment instrument; and

(B) delivering the payment instrument to the principal broker; and

(iv) the principal broker directly delivers the payment instrument to the associate broker or sales agent.

(c) The commission, with the concurrence of the division, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) defining what constitutes a "payment instrument" for purposes of this Subsection (1); or

(ii) the form and contents of the written instructions required by Subsection (1)(b), including providing that the contents of the written instructions indicate that the payment instrument process is an assignment to the associate broker or sales agent by the principal broker of a portion of the consideration the title insurance agent is obligated to pay the principal broker.

(2) An inactive associate broker or sales agent may not conduct a real estate transaction until the inactive associate broker or sales agent becomes affiliated with a licensed principal broker and submits the required documentation to the division. An inactive principal broker

may not conduct a real estate transaction until the principal broker's license is activated with the division.

(3) A sales agent or associate broker may not affiliate with more than one principal broker at the same time.

(4) (a) Except as provided by rule, a principal broker may not be responsible for more than one real estate brokerage at the same time.

(b) (i) In addition to issuing principal broker, associate broker, and sales agent licenses authorizing the performance of all of the acts set forth in Subsection 61-2-2[(12)](15), the division may issue specialized sales licenses and specialized property management licenses with the scope of practice limited to the specialty.

(ii) An individual may hold a specialized license in addition to a license to act as a principal broker, an associate broker, or a sales agent.

(iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Procedures Act, for the administration of this Subsection (4), including:

(A) prelicensing and postlicensing education requirements;

(B) examination requirements;

(C) affiliation with real estate brokerages or property management companies; and

(D) other licensing procedures.

(c) An individual may not be a principal broker of a brokerage and a sales agent or associate broker for a different brokerage at the same time.

(5) An owner, purchaser, lessor, or lessee who engages the services of a principal broker may designate which sales agents or associate brokers affiliated with that principal broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or exchange of real estate, or in exercising an option relating to real estate.

Section 4. Section **61-2-11** is amended to read:

61-2-11. Grounds for disciplinary action.

The following acts are unlawful for a person required to be licensed under this chapter:

(1) making a substantial misrepresentation;

(2) making a false promise of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation, or of making false promises through agents, sales agents, advertising, or otherwise;

- 280 (4) acting for more than one party in a transaction without the informed consent of all
281 parties;
- 282 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
283 principal broker;
- 284 (b) representing or attempting to represent a broker other than the principal broker with
285 whom the person is affiliated; or
- 286 (c) representing as sales agent or having a contractual relationship similar to that of
287 sales agent with other than a licensed principal broker;
- 288 (6) (a) failing, within a reasonable time, to account for or to remit monies coming into
289 the person's possession that belong to others;
- 290 (b) commingling the monies described in Subsection (6)(a) with the person's own
291 monies; or
- 292 (c) diverting the monies described in Subsection (6)(a) from the purpose for which they
293 were received;
- 294 (7) paying or offering to pay valuable consideration, as defined by the commission, to a
295 person not licensed under this chapter, except that valuable consideration may be shared:
- 296 (a) with a licensed principal broker of another jurisdiction; or
- 297 (b) as provided under:
- 298 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 299 (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 300 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
- 301 (8) being unworthy or incompetent to act as a principal broker, associate broker, or
302 sales agent in such manner as to safeguard the interests of the public;
- 303 (9) failing to voluntarily furnish a copy of a document to all parties executing the
304 document;
- 305 (10) failing to keep and make available for inspection by the division a record of each
306 transaction, including:
- 307 (a) the names of buyers and sellers or lessees and lessors;
- 308 (b) the identification of the property;
- 309 (c) the sale or rental price;
- 310 (d) monies received in trust;

(e) agreements or instructions from buyers and sellers or lessees and lessors; and

(f) any other information required by rule;

(11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(12) regardless of whether the crime is related to real estate, being convicted of a criminal offense involving moral turpitude within five years of the most recent application, including:

(a) a conviction based upon a plea of nolo contendere; or

(b) a plea held in abeyance to a criminal offense involving moral turpitude;

(13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(14) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensee or unlicensed staff;

(15) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

(c) the rules adopted by the commission and the division;

(16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;

(17) any other conduct which constitutes dishonest dealing;

(18) unprofessional conduct as defined by statute or rule;

(19) on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness, having one of the following suspended, revoked, surrendered, or cancelled:

(a) a real estate license issued by another jurisdiction; or

(b) another professional license issued by this or another jurisdiction;

(20) failing to respond to a request by the division in an investigation authorized under this chapter, including:

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records;

(21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(a) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2); ~~[or]~~

(22) violating an independent contractor agreement between a principal broker and a sales agent as evidenced by a final judgment of a court[-];

(23) (a) engaging in a foreclosure rescue if not licensed under this chapter;

(b) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(c) requesting or requiring a person to pay a fee before engaging in an act of foreclosure rescue if the person is required to forfeit the fee if the act is unsuccessful;

(d) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(ii) falsely representing or advertising that the licensee is acting on behalf of:

(A) a government agency;

(B) the person's lender or loan servicer; or

(C) a nonprofit or charitable institution;

(e) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real property to the licensee or to a third party with whom the licensee has a business relationship or financial interest;

(ii) make a mortgage payment to a person other than the person's loan servicer; or

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor; or
(24) for an agreement for foreclosure rescue entered into on or after May 11, 2010,
engaging in an act of foreclosure rescue without offering in writing to the person entering into
the agreement for foreclosure rescue a right to cancel the agreement within three business days
after the day on which the person enters the agreement.

Section 5. Section **61-2c-102 (Effective 01/01/10)** is amended to read:

61-2c-102 (Effective 01/01/10). Definitions.

(1) As used in this chapter:

(a) "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(b) "Applicant" means a person applying for a license under this chapter.

(c) "Approved examination provider" means a person approved by the nationwide database as an approved test provider.

(d) "Associate lending manager" means an individual who:

(i) qualifies under this chapter as a principal lending manager; and

(ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

(e) "Branch office" means a licensed entity's office:

(i) for the transaction of the business of residential mortgage loans regulated under this chapter;

(ii) other than the main office of the licensed entity; and

(iii) that operates under the same business name as the licensed entity.

(f) "Business day" means a day other than:

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

~~(f)~~ (g) (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:

(A) engage in an act that makes an individual a loan originator;

(B) make or originate a residential mortgage loan;

(C) directly or indirectly solicit a residential mortgage loan for another; ~~[or]~~

(D) unless excluded under Subsection (1)~~[(f)]~~(g)(ii), render services related to the origination of a residential mortgage loan including:

(I) preparing a loan package;

(II) communicating with the borrower and lender; or

(III) advising on a loan term~~[-];~~ or

(E) engage in a loan modification assistance.

(ii) "Business of residential mortgage loans" does not include:

(A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty such as:

(I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;

(II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;

(III) word processing;

(IV) sending correspondence; or

(V) assembling files;

(B) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)~~[(f)]~~(g)(i); or

(C) except if an individual will engage in an activity as a loan originator, acting in one or more of the following capacities:

(I) a loan wholesaler;

(II) an account executive for a loan wholesaler;

(III) a loan underwriter;

(IV) a loan closer; ~~[or]~~

(V) funding a loan~~[-];~~ or

(D) if employed by a person who owns or services an exiting residential mortgage loan, as defined in Section 70D-2-102, the direct negotiation with the borrower for the purpose of loan modification.

~~[(g)]~~ (h) "Certified education provider" means a person who is certified under Section

435 61-2c-204.1 to provide one or more of the following:

436 (i) prelicensing education; or

437 (ii) continuing education.

438 ~~[(h)]~~ (i) "Closed-end" means a loan:

439 (i) with a fixed amount borrowed; and

440 (ii) that does not permit additional borrowing secured by the same collateral.

441 ~~[(h)]~~ (j) "Commission" means the Residential Mortgage Regulatory Commission

442 created in Section 61-2c-104.

443 ~~[(h)]~~ (k) "Compensation" means anything of economic value that is paid, loaned,

444 granted, given, donated, or transferred to an individual or entity for or in consideration of:

445 (i) services;

446 (ii) personal or real property; or

447 (iii) another thing of value.

448 ~~[(k)]~~ (l) "Continuing education" means education taken by an individual licensed under

449 this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and

450 61-2c-205 to renew a license under this chapter.

451 ~~[(h)]~~ (m) "Control," as used in Subsection (1)(a), means the power to directly or

452 indirectly:

453 (i) direct or exercise a controlling interest over:

454 (A) the management or policies of an entity; or

455 (B) the election of a majority of the directors, officers, managers, or managing partners

456 of an entity;

457 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or

458 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

459 ~~[(m)]~~ (n) "Depository institution" is as defined in Section 7-1-103.

460 ~~[(m)]~~ (o) "Director" means the director of the division.

461 ~~[(o)]~~ (p) "Division" means the Division of Real Estate.

462 ~~[(p)]~~ (q) "Dwelling" means a residential structure attached to real property that contains

463 one to four units including any of the following if used as a residence:

464 (i) a condominium unit;

465 (ii) a cooperative unit;

466 (iii) a manufactured home; or

467 (iv) a house.

468 ~~[(t)]~~ (r) "Entity" means:

469 (i) a corporation;

470 (ii) a limited liability company;

471 (iii) a partnership;

472 (iv) a company;

473 (v) an association;

474 (vi) a joint venture;

475 (vii) a business trust;

476 (viii) a trust; or

477 (ix) another organization.

478 ~~[(t)]~~ (s) "Executive director" means the executive director of the Department of
479 Commerce.

480 (t) "Foreclosure rescue" means, for compensation or with the expectation of receiving
481 valuable consideration, to engage in an act that:

482 (i) the person represents will assist a borrower in preventing a foreclosure; and

483 (ii) relates to a transaction involving the transfer of title to residential real property.

484 ~~[(s)]~~ (u) "Inactive status" means a dormant status into which an unexpired license is
485 placed when the holder of the license is not currently engaging in the business of residential
486 mortgage loans.

487 ~~[(t)]~~ (v) "Licensee" means a person licensed with the division under this chapter.

488 ~~[(t)]~~ (w) "Licensing examination" means the examination required by Section
489 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

490 (x) "Loan modification assistance" means to act or offer to act on behalf of a person to:

491 (i) obtain a loan term of a residential mortgage loan that is different from an existing
492 loan term including:

493 (A) an increase or decrease in an interest rate;

494 (B) a change to the type of interest rate;

495 (C) an increase or decrease in the principal amount of the residential mortgage loan;

496 (D) a change in the number of required period payments;

- 497 (E) an addition of collateral;
- 498 (F) a change to, or addition of, a prepayment penalty;
- 499 (G) an addition of a cosigner; or
- 500 (H) a change in persons obligated under the existing residential mortgage loan; or
- 501 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan.
- 502 ~~(v)~~ (y) (i) Except as provided in Subsection (1)~~(v)~~(y)(ii), "loan originator" means an
- 503 individual who for compensation or in expectation of compensation:
- 504 (A) takes a residential mortgage loan application; or
- 505 (B) offers or negotiates terms of a residential mortgage loan~~[-]~~ for the purpose of:
- 506 (I) a purchase;
- 507 (II) a refinance;
- 508 (III) a loan modification assistance; or
- 509 (IV) a foreclosure rescue.
- 510 (ii) "Loan originator" does not include a person who:
- 511 (A) is described in Subsection (1)~~(v)~~(y)(i), but who performs exclusively
- 512 administrative or clerical tasks as described in Subsection (1)~~(f)~~(g)(ii)(A);
- 513 (B) unless compensated by a lender, a principal lending manager, or an agent of a
- 514 lender or principal lending manager:
- 515 (I) only performs real estate brokerage activities; and
- 516 (II) is licensed under Chapter 2, Division of Real Estate; and
- 517 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 518 11 U.S.C. Sec. 101(53D).
- 519 ~~(w)~~ (z) "Mortgage officer" means an individual who is licensed with the division to
- 520 transact the business of residential mortgage loans through a principal lending manager.
- 521 ~~(x)~~ (aa) "Nationwide database" means the Nationwide Mortgage Licensing System
- 522 and Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12
- 523 U.S.C. Sec. 5101, et seq.
- 524 ~~(y)~~ (bb) "Nontraditional mortgage product" means a mortgage product other than a
- 525 30-year fixed rate mortgage.
- 526 ~~(z)~~ (cc) "Person" means an individual or entity.
- 527 ~~(aa)~~ (dd) "Prelicensing education" means education taken by an individual seeking to

be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

~~[(bb)]~~ (ee) (i) "Principal lending manager" means an individual licensed as a principal lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.

(ii) An individual licensed as a principal lending manager may transact the business of residential mortgage loans as a mortgage officer.

~~[(cc)]~~ (ff) "Record" means information that is:

(i) prepared, owned, received, or retained by a person; and

(ii) (A) inscribed on a tangible medium; or

(B) (I) stored in an electronic or other medium; and

(II) retrievable in perceivable form.

~~[(dd)]~~ (gg) "Residential mortgage loan" means an extension of credit, if:

(i) the loan or extension of credit is secured by a:

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

(ii) the mortgage, deed of trust, or consensual security interest described in Subsection (1)~~[(dd)]~~(gg)(i):

(A) is on a dwelling located in the state; and

(B) is created with the consent of the owner of the residential real property; and

(iii) solely for the purposes of defining "loan originator," the extension of credit is primarily for personal, family, or household use.

~~[(cc)]~~ (hh) "State" means:

(i) a state, territory, or possession of the United States;

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

~~[(ff)]~~ (ii) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Section 6. Section **61-2c-301 (Effective 01/01/10)** is amended to read:

61-2c-301 (Effective 01/01/10). Prohibited conduct -- Violations of the chapter.

(1) A person transacting the business of residential mortgage loans in this state may not:

(a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business;

(b) charge a fee in connection with a residential mortgage loan transaction:

(i) that is excessive; or

(ii) if the person does not comply with Section 70D-2-305;

(c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;

(d) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

(iii) knowingly permit false information to be submitted by any party;

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

(i) this chapter;

(ii) an order of the commission or division; or

(iii) a rule made by the division;

(g) fail to respond within the required time period to:

(i) a notice or complaint of the division; or

(ii) a request for information from the division;

590 (h) make false representations to the division, including in a licensure statement;
591 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,
592 engage in the business of residential mortgage loans with respect to the transaction if the
593 person also acts in any of the following capacities with respect to the same residential mortgage
594 loan transaction:

- 595 (i) appraiser;
- 596 (ii) escrow agent;
- 597 (iii) real estate agent;
- 598 (iv) general contractor; or
- 599 (v) title insurance agent;
- 600 (j) order a title insurance report or hold a title insurance policy unless the person
601 provides to the title insurer a copy of a valid, current license under this chapter;
- 602 (k) engage in unprofessional conduct as defined by rule;
- 603 (l) engage in an act or omission in transacting the business of residential mortgage
604 loans that constitutes dishonesty, fraud, or misrepresentation;
- 605 (m) engage in false or misleading advertising;
- 606 (n) (i) fail to account for monies received in connection with a residential mortgage
607 loan;
- 608 (ii) use monies for a different purpose from the purpose for which the monies are
609 received; or
- 610 (iii) except as provided in Subsection (4), retain monies paid for services if the services
611 are not performed;
- 612 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
613 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- 614 (p) engage in an act that is performed to:
- 615 (i) evade this chapter; or
- 616 (ii) assist another person to evade this chapter;
- 617 (q) recommend or encourage default, delinquency, or continuation of an existing
618 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
619 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 620 (r) in the case of the principal lending manager of an entity or a branch office of an

621 entity, fail to exercise reasonable supervision over the activities of:

622 (i) unlicensed staff; and

623 (ii) a mortgage officer who is licensed with the principal lending manager;

624 (s) pay or offer to pay an individual who does not hold a license under this chapter for

625 work that requires the individual to hold a license under this chapter;

626 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

627 (i) provide a title insurance product or service without the approval required by Section

628 31A-2-405; or

629 (ii) knowingly provide false or misleading information in the statement required by

630 Subsection 31A-2-405(2); ~~[or]~~

631 (u) represent to the public that the person can or will perform any act of a loan

632 originator if that person is not licensed under this chapter because the person is exempt under

633 Subsection 61-2c-102(1)~~(f)~~(g)(ii)(A), including through:

634 (i) advertising;

635 (ii) a business card;

636 (iii) stationary;

637 (iv) a brochure;

638 (v) a sign;

639 (vi) a rate list; or

640 (vii) other promotional item~~[-]~~;

641 (v) (i) engage in an act of loan modification assistance without being licensed under

642 this chapter;

643 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent

644 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under

645 that chapter;

646 (iii) request or require a person to pay a fee before engaging in an act of loan

647 modification assistance if the person is required to forfeit the fee if the act is unsuccessful;

648 (iv) induce a person seeking a loan modification to hire the licensee to engage in an act

649 of loan modification assistance by:

650 (A) suggesting to the person that the licensee has a special relationship with the

651 person's lender or loan servicer; or

652 (B) falsely representing or advertising that the licensee is acting on behalf of:

653 (I) a government agency;

654 (II) the person's lender or loan servicer; or

655 (III) a nonprofit or charitable institution;

656 (v) recommend or participate in a loan modification that requires a person to:

657 (A) transfer title to real property to the licensee or to a third party with whom the
658 licensee has a business relationship or financial interest;

659 (B) make a mortgage payment to a person other than the person's loan servicer; or

660 (C) refrain from contacting the person's:

661 (I) lender;

662 (II) loan servicer;

663 (III) attorney;

664 (IV) credit counselor; or

665 (V) housing counselor; or

666 (vi) for an agreement for loan modification assistance entered into on or after May 11,
667 2010, engage in an act of loan modification assistance without offering in writing to the person
668 entering into the agreement for loan modification assistance a right to cancel the agreement
669 within three business days after the day on which the person enters the agreement.

670 (2) Whether or not the crime is related to the business of residential mortgage loans, it
671 is a violation of this chapter for a licensee or a person who is a certified education provider to
672 do any of the following with respect to a criminal offense that involves moral turpitude:

673 (a) be convicted;

674 (b) plead guilty or nolo contendere;

675 (c) enter a plea in abeyance; or

676 (d) be subjected to a criminal disposition similar to the ones described in Subsections
677 (2)(a) through (c).

678 (3) A principal lending manager does not violate Subsection (1)(r) if:

679 (a) in contravention of the principal lending manager's written policies and
680 instructions, an affiliated licensee of the principal lending manager violates:

681 (i) this chapter; or

682 (ii) rules made by the division under this chapter;

683 (b) the principal lending manager established and followed reasonable procedures to
684 ensure that affiliated licensees receive adequate supervision;

685 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
686 attempted to prevent or mitigate the damage;

687 (d) the principal lending manager did not participate in or ratify the violation by an
688 affiliated licensee; and

689 (e) the principal lending manager did not attempt to avoid learning of the violation.

690 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
691 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
692 if the mortgage is not closed.